UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE NEIMAN MARCUS GROUP, INC.

and

Case 31-CA-074295

SHEILA MONJAZEB

ORDER DENYING MOTION1

The Respondent's Motion to Dismiss Complaint is denied. The Respondent has failed to establish that it is entitled to judgment as a matter of law.²

Dated, Washington, D.C., December 20, 2013

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER. MEMBER

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¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Member Johnson notes that if the Respondent's motion to dismiss were limited to the class action waiver allegations in the complaint and its enforcement of the revised arbitration agreement that was an essential part of the 2010 settlement agreement between the Respondent and the General Counsel in Case 20-CA-33510, he would be inclined to grant the motion. However, the Respondent's litigation forming the basis for the charge in this case actually involved enforcement of the original, allegedly unlawful arbitration agreement, which did not include the revised agreement's additional language allowing joint legal claims under certain circumstances. A fortiori, there could not be a bar arising from the settlement agreement. Moreover, separate and apart from issues relating to the validity of the class action waiver, the General Counsel is contending here that several of the documents for the Respondent's mandatory arbitration program interfere with employees' right to file unfair labor practice charges with the Board. It is not apparent why the settlement agreement in the prior case would operate to bar litigation of this issue.